

fails to exhaust state remedies and the court to which he should have presented his claim would now find it procedurally barred, there is a procedural default.” Id.

A federal court may not review procedurally defaulted claims “unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.” Coleman v. Thompson, 501 U.S. 722, 750 (1991). Petitioner alleges that post-conviction counsel dismissed his motion for post-conviction relief at her own discretion and without his authorization. Doc. No. 1.

If petitioner contends that ineffective assistance of Rule 24.035 counsel caused his state procedural default, he may not do so because claims of ineffective assistance of counsel must have been independently presented in a timely manner to the state courts in order to be used to show the alleged cause for state procedural default. Edwards v. Carpenter, 529 U.S. 446, 451 (2000).

Petitioner also has failed to show that a fundamental miscarriage of justice will result if his defaulted claims are not considered. See Weeks v. Bowersox, 119 F.3d 1342, 1350 (8th Cir. 1997) (petitioner must make a showing of “actual innocence” in order to fit within the fundamental miscarriage of justice exception) (en banc) (citing Schlup v. Delo, 513 U.S. 298 (1995)), cert. denied, 522 U.S. 1093 (1998). Grounds 1 through 4 will be denied.¹

¹ As respondent argues, petitioner’s grounds for relief also are without merit. Ground 1 is without merit pursuant to Mo. Rev. State § 565.021(1) (2000), which states “[a] person commits the crime of murder in the second degree if he . . . with the purpose of causing serious physical injury to another person, causes the death of another person[.]” Ground 2 is not cognizable under 28 U.S.C. § 2254. See Gee v. Groose, 110 F.3d 1346, 1351-1352 (8th Cir. 1997). Ground 3 was waived by petitioner’s guilty plea and is without merit. Ground 4 does not state a Due Process Clause violation and is without merit.

Accordingly, it is **ORDERED** that:

- (1) the petition for writ of habeas corpus is denied; and
- (2) this case is dismissed with prejudice.

/s/ Howard F. Sachs
HOWARD F.SACHS
UNITED STATES DISTRICT JUDGE

Kansas City, Missouri

Dated: 11/29/05